

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/FLN)
WARMING PRODUCT LIABILITY
LITIGATION

This Document Relates To:

MICHAEL MOORE,

Civil Action No.: 17-CV-02901-JNE-DTS

Plaintiff,

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Michael Moore, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1538], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

FACTS

In July of 2015, Mr. Michael Moore contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during the original surgery. On July 14, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

Efforts to have Mr. Moore complete the Plaintiff Fact Sheet were initially complicated by the inability to contact the client. Counsel learned in June of 2018, Plaintiff passed away. Plaintiff's daughter Michelle Moore informed Counsel she does not want to pursue the claim. Counsel continues to make diligent efforts to contact any other heirs Plaintiff may have before his claim is extinguished. While counsel has diligently continued their attempts to contact additional heirs, those efforts have not been successful to date. As a result, counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim.

CONCLUSION

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Plaintiff be given an additional sixty (60) days to contact Plaintiff's heirs to determine how to proceed with this matter and provide the necessary information to cure any alleged deficiencies with the Plaintiff Fact Sheet and to continue the case.

Dated: October 11, 2018

KENNEDY HODGES, LLP

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